

CONNECTICUT SCHOOL FINANCE PROJECT

Addressing Questions and Concerns Raised in Testimony on S.B. 542 – An Act Establishing the Connecticut Special Education Predictable Cost Cooperative

We sincerely appreciate the questions raised by individuals and organizations during Tuesday's Insurance and Real Estate Committee public hearing concerning, among other bills, S.B. 542 – An Act Establishing the Connecticut Special Education Predictable Cost Cooperative. In an effort to provide greater clarity about the Co-op and address concerns raised during public testimony, the Connecticut School Finance Project has responded to the concerns/questions below. Concerns/questions have been organized in this document by the party raising them.

Along with the responses provided below, we are happy to supply additional information, as well as address any further concerns or questions individuals and organizations may have. If you have additional questions or concerns, you can reach me any time at katie.roy@ctschoolfinance.org or 860-912-0775.

Many of the questions and concerns raised during testimony centered around the implementation, management, and structure of the Co-op. It is important to note that under our proposed plan, the Co-op would be implemented over a 1-2 year period.

We have proposed that the specific legislation that should be put before the General Assembly this year would establish an Implementation Committee (with representation from state and local governments and school districts), to be formed at the beginning of FY 2018, that will oversee the creation of an operating plan, drafting of the organizing documents, including independent actuarial analysis, bylaws for the board of directors, payment structures, etc. Then, only after this process has taken place, would the funding be allocated and the Co-op become operational.

Therefore, we anticipate the Co-op would not become operational until 2019-2020 school year, at the earliest. One of the primary reasons for the Co-op to be set up in this way is so stakeholders can have direct input into how these structural and administrative questions get answered.

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Questions Raised by State Representative Gail Lavielle

- **How does the decision to fund a district's needs take into account the level of services each district decides to provide?**

A: Each community will make an annual contribution to the Co-op, for each resident student with special education needs, calculated based on each district's past experience. Each district will be reimbursed for 100 percent of its actual special education costs in the current year. In this way, all decisions related to special education service delivery continue to be made—in consultation with a student's parent(s)/guardian(s)—by the teachers, staff, and district special education directors who work with students with disabilities every day. All communities will receive some state support for special education.

- **Will districts need to prove to the Co-op that decisions to provide certain services are justified?**

A: No, districts will not need to prove to the Co-op that decisions to provide certain services are justified. The Co-op is designed to keep all decisions about the delivery of the special education services at the local level so that all decisions related to special education service delivery continue to be made—in consultation with a student's parent(s)/guardian(s)—by the teachers, staff, and district special education directors who work with students with disabilities every day. The only requirement for submitting a request for reimbursement to the Co-op is that it be a special education expense (in other words, it would not be allowable to submit an expense related to facilities maintenance to the Co-op).

Under the proposed model, any service—in or out of district—reported by districts as a special education expense on their End of Year School Report (ED001 Schedule 4) is included in the Co-op. This includes in-district special education services and personnel, special education transportation, out-placements, contracted services. Ultimately, the Co-op's board of directors (to comprised of Co-op members (towns and school districts) and state officials) will have the authority to determine which types expenses will be considered special education expenses.

- **At what juncture do towns receive their annual funding from the Co-op? What happens if a student with extraordinary needs enters a school district midway through an academic year?**

A: The payment schedule will ultimately be determined by the Implementation Committee and could be modified by the Co-op board of directors (to comprised of Co-op members (towns and schools districts) and state officials), but we anticipate districts will be reimbursed by the Co-op on at least a quarterly basis for 100 percent of their actual special education costs incurred in that quarter. If a student with extraordinary needs moves into the district mid-

year, the district will be reimbursed in the current year for all of the special education expenses they incur to educate that student.

- **Are school districts expected to make a contribution to the Co-op at the outset of every fiscal or academic year? An initial outlay like this might be destabilizing to municipalities under the current budgetary circumstances in the state.**

A: Because school districts in Connecticut are fiscally dependent on municipalities, the Community Contribution will be paid by the town, rather than the district. Community Contributions will also always be less than a district's actual special education costs, ensuring the Co-op will never increase the amount of money a community is already spending on special education. The schedule for municipal contributions to the Co-op will be determined by the Implementation Committee during the planning year to ensure there are no cash-flow issues for state or local governments.

- **How will districts be sure that their contributions to the Co-op will be used for special education expenses?**

A: The Co-op will be organized as an entity independent of state or local government so its assets can be protected from uses other than funding special education. Under IDEA, state and local governments must maintain support for special education and all funds allocated for special education must be spent on special education services. In the circumstance where the Co-op collects more funds in a given year than is necessary to cover special education costs, districts will receive a contribution refund, which will come in the form of a discount on the next year's Community Contribution. This serves as an additional protection to ensure special education funds are only used for special education services.

- **What would be the state's role in the Co-op? Who would actually manage it? How would its administration be funded? How would it be overseen?**

A: There are a variety of ways that the Co-op could be organized. However, after thorough research, the preferred method is to use a pre-existing structure called a sponsored captive insurance company (SCIC). In this model, the state would be the "sponsor" of the SCIC, and would invest the initial capital required to fund the Co-op. The Co-op would also be governed by a board of directors with representation from school districts, local governments, and state government. Additionally, as members of the Co-op, each town and district would also have certain rights and responsibilities, including the ability to participate in the governance and oversight of the Co-op.

The Co-op is designed to require minimal administrative bureaucracy or expenses, as it does not play a role in service delivery or the special education identification process. However, any administrative costs of managing the Co-op

could be fully financed by the interest on the Co-op's assets, even if held in a simple-interest account.

- **If certain districts were to decide not to participate in the Co-op, would the predictability features of the Co-op be diminished?**

A: The Co-op is designed to be the method by which the state distributes its special education funds. If districts were not to participate in the Co-op, they would forgo both the predictability offered by the Co-op's structure and state aid for special education. However, if towns that can demonstrate their ability to adequately fund a free and appropriate education for all students choose not to participate and forfeit their state aid for special education, it will not impact the fiscal solvency or predictability benefits of the Co-op.

Questions Raised by the Connecticut Education Association (CEA)

The following text in this section is directly from CEA's testimony. All responses from the Connecticut School Finance Project are italicized below each question.

###

Based on our understanding, the plan proposes three primary changes, each of which raises further questions:

- 1) **Transfers \$580m from ECS grant to a state special education account:** The plan transfers out about 22% of all ECS funds and puts that funding into a new special education account. It also transfers into this account the existing special education Excess Cost grant (\$139m).

- **How much will each town lose in ECS funding and how is that amount determined?**

A: The state contribution to the Co-op is made by re-allocating the portion of the Education Cost Sharing (ECS) grant currently attributed to special education and the Excess Cost grant to the Co-op. This means the statewide ECS grant will be reduced by approximately \$450 million (the amount of ECS dollars attributable to special education) and those funds (along with the funds from the Excess Cost grant) will be used, along with funds contributed by local government, to reimburse districts for 100 percent of their actual special education costs in the current year. The ECS grant is not currently allocated using the ECS formula and the distribution of ECS funding is currently under review by the General Assembly, so we are not able to project how ECS funding will be distributed to districts by the General Assembly. However, it is important to note that nothing in the Co-op's structure directly impacts the amount of state education dollars a town receives for general education.

- **Is there a proposed increase in state funding? As costs rise, the local share will increase if there is no increase in state funding. Is there a provision for the state's contribution to rise with inflation?**

A: Under the federal Individuals with Disabilities in Education Act (IDEA), the state must contribute at least the same amount of total funding in support of special education as it did in the prior year. This is called the state's maintenance of support requirement. The Co-op has been designed to not require any additional special education expenditures from the State. It simply reallocates exiting state dollars spent on special education, and reported annually to the U.S. Department of Education, from the Excess Cost and ECS grants to the Co-op. Because the State is required by federal law to continue to fund special education at the same level as it did last year, the State will be required to continue to meet its obligation under IDEA. It is also important to note the Co-op does

not prevent the State from increasing funding for special education or general education. It is accurate that if, as special education costs increase, the state does not increase its contribution, that the cost to local government will increase; however, this would occur whether or not the Co-op structure was in place. The Co-op structure does not raise or lower special education expenditures; instead, it is designed to ensure that towns and school districts know what their special education costs will be in advance (in the prior year, when they are doing their budget planning).

○ **How much will it cost the state to administer the account?**

A: The Co-op is designed to require minimal administrative bureaucracy or expenses, as it does not play a role in service delivery or the special education identification process. The Co-op administrator would be selected by the Co-op board of directors from a group of providers that are pre-screened by the Connecticut Department of Insurance. These potential administrators would likely be vetted through a competitive bidding process and we anticipate that any administrative costs of managing the Co-op could be fully financed by the interest on the Co-op's assets, even if held in a simple-interest account.

○ **Who will oversee the account?**

A: The Co-op will be wholly owned and governed by its members. The board of directors will be made up of representatives from member school districts, local governments, and state government. This board will select an administrator to oversee day-to-day operations of the Co-op such as processing reimbursements to districts. Additionally, as members of the Co-op, each town and district will have certain rights and responsibilities, including the ability to participate in the governance and oversight of the Co-op.

○ **If the account gains interest, how will proceeds be used?**

A: How Co-op assets are invested and managed will be determined by the Co-op's board of directors. The initial asset management plan will be included in the organizational documents developed by the Implementation Committee during the planning year, and these will be approved by the Connecticut Department of Insurance.

○ **If the account is underfunded or insufficient, who pays?**

A: The Co-op is designed to operate with a stop-loss policy and/or reserve fund that will be held in the Co-op structure, and outside of state or local government to ensure all districts' total special education expenditures can be reimbursed by the Co-op, even in the event of an unexpected increase in special education costs.

Based on our model, the reserve fund would work as follows: based on an actuarial analysis, we estimate 2.5 percent of Connecticut's total special education spending (approximately \$50 million in fiscal year 2015) should be a sufficient reserve to ensure the solvency of the Co-op. The 2.5 percent factor was determined by testing various reserve levels to find the appropriate level that balances the need for fiscal solvency of the Co-op without over-reserving for the shortfall risk. Too high a reserve level could lead to overly high Community Contributions to meet both reserve requirements and special education costs, while too low a reserve level could result in a funding shortfall during years of high special education costs. The adequacy of the reserve fund would be evaluated periodically and adjusted to reflect actual experience over time.

The reserve fund would be supported by allocating an annual amount, currently estimated at seven percent of the state's share of special education funding. These funds will be added to the reserve at the beginning of each year, until the reserve fund reaches 2.5 percent of total special education expenditures. Going forward, following a year where special education expenditures exceed the total amount of state and Community Contributions, the seven percent addition to the reserve will replenish the reserve fund to its maximum value, entitled the Required Reserve Balance (RRB). Similar to the initial reserve, the RRB is 2.5 percent of the total special education expenditures from the prior year. The RRB is a floating number rather than a constant to protect the reserve fund in future years from increasing costs and inflation. In years that the reserve fund exceeds 2.5 percent of total special education expenditures, the excess reserve can be returned to districts in the form of a contribution refund. The reserve fund protects the integrity of the model during years of higher-than-predicted statewide spending, thus ensuring the Co-op is financially stable.

Alternatively or in addition, the Co-op could purchase a stop-loss policy to cover years when special education costs exceed expectations. A stop-loss policy could replace a reserve system, or it could be purchased in addition to, or to supplement, the reserve fund. The cost of a stop loss policy could be paid out of the interest on the Co-op's assets, even if held in a simple-interest account.

2) Transfers local funding for special education to state special education account:

The plan would require towns to deposit the amount they usually spend on special education funding into a state account.

o **Are checks paid from the town or board of education?**

A: Because Connecticut school districts are fiscally dependent on municipalities, school districts cannot be the payers to the Co-op.

Therefore, Community Contributions for each special education student will be assessed at the district-level and the Community Contribution will be paid by the town where that student resides.

- **Who picks up cost increases due to inflation over time?**

A: Special education funds are the only education funds protected under federal law. This means the State has a legal obligation under IDEA to contribute over \$560 million to the Co-op, or it risks losing all federal support for special education. However, the Co-op is not a panacea that will solve all of the state's education spending and overall budget challenges. Connecticut increased state funding for education (including special education) over nine percent between 2008 and 2014 despite the recession, while 31 states have reduced their state support for education to pre-2008 levels. Therefore, there is historical precedent that Connecticut tends to prioritize education funding, and in a stronger fiscal climate the General Assembly may continue to make these investments. However, if, as special education costs increase, the state does not increase its contribution, that the cost to local government will increase; however, this would occur whether or not the Co-op structure was in place.

- **What guarantee is there during lean budget years that the state will not transfer these funds into the General Fund and use them for other purposes?**

A: The Co-op will be organized as an entity independent of state or local government so its assets can be protected from uses other than funding special education. Under IDEA, state and local governments must maintain support for special education and all funds allocated for special education must be spent on special education services. In the circumstance where the Co-op collects more funds in a given year than is necessary to cover special education costs, districts will receive a contribution refund, which will come in the form of a discount on the next year's Community Contribution. This serves as an additional protection to ensure special education funds are only used for special education services.

3) Charges towns an insurance-style premium paid into the state special education account: The plan determines a district's "risk" factor by looking at previous special education spending and charges a premium to be paid into the state account. If a town's special education spending increases, its premium increases.

- **If a board of education has sustained changes (higher or lower) in costly special education outplacements over time, how do their rates reflect this change?**

A: To ensure schools and districts experience the desired predictability, Community Contribution are calculated using two separate standards. Special education students are separated into two groups: costs associated with educating general special education students, and special education students with associated costs that are considerably higher than average. A district's per-pupil costs for general special education students are compared to the state average per-pupil costs for general special education students, and a district's per-pupil costs for considerably higher-need special education students are compared only to the state average per-pupil costs for considerably higher-need special education students.

This methodology ensures a given district is not unduly penalized for a small number of extremely high-cost students moving into the district. This aspect of the funding model also allows districts to manage special education service delivery at the local level while ensuring that they continue to have an incentive to appropriately manage special education costs. Further, it ensures school districts with lower special education expenditures will not offset districts with higher special education expenditures.

- **Would incentives to lower a board's premium result in preventing students who would be best served in residential programs from being placed into them?**

A: There are no incentives for educational outcomes or types of service delivery models in the Co-op. Districts will be reimbursed for 100 percent of special education expenditures in the current year, whether the student is outplaced or served in-district.

- **Are there unintended consequences that will place increased burdens on schools in terms of staffing, funding, and providing other special education services that should otherwise be done in outplacement facilities?**

A: The Co-op does not incentivize or disincentive outplacements, and it does not affect the current method of determining a student's eligibility for services or the type of program that is most appropriate for a child. This process for determining appropriate services is defined under IDEA, and decisions regarding service delivery will continue to be made—in consultation with a student's parent(s)/guardian(s)—by the teachers, staff, and district special education directors that know and work with students with disabilities through their Individual Education Plans (IEPs).

- 4) **Reimburses towns for special education costs:** The plan provides grants to reimburse districts for actual special education costs.

- **Would the cooperative funds be sent to municipalities or to boards of education?**

A: Connecticut local public school districts are fiscally dependent, making it impossible for them to receive funds without those funds being sent to the municipality. However, the Co-op reimbursements are intended to be grants to the district—not municipal aid grants.

- **Will boards of education get back fees they have overpaid into the cooperative if they experience consecutive years of low special education costs?**

A: Yes. The Co-op is designed with a contribution refund system that ensures any surplus contribution dollars collected will be returned to districts to serve special education students and their needs. After districts have been reimbursed for all their special education expenditures, and the Required Reserve Balance (2.5 percent of the total special education expenditures from the prior year) has been met, any excess funds would be distributed to districts whose special education expenditures fell below the state average. The refunds would be distributed proportionally to each district on a per-pupil basis, depending on the district's actual experience.

- **Will the state impose additional requirements or conditions to receiving reimbursements that result in new fiscal or administrative burdens or create additional unfunded mandates?**

A: All districts will receive some state aid for special education services so there are no unfunded mandates associated with the Co-op. Districts already report their special education expenditures on an annual basis and are subject to audit by the State Department of Education, which is responsible for ensuring compliance with IDEA. However, in order for districts to receive reimbursements in a timely fashion, they will need to report these expenditures to the Co-op on a more regular basis. The schedule for submitting expenses for reimbursement to the Co-op will be determined by the Implementation Committee during the planning year to ensure the schedule is not administratively burdensome and meets the needs of school districts. The Co-op board of directors will have the authority to alter the schedule for submitting expenses for reimbursement in future years as necessary to meet the needs of districts.

Concerns Raised by Capitol Region Education Council (CREC)

It is important to note CREC's testimony was originally submitted, incorrectly, as testimony on behalf of the Regional Educational Service Center (RESC) Alliance. CREC has submitted a request to the committee clerk for the record to be corrected.

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- **There is no proposal for the cost of creating and managing the newly created system and this could bring an additional burden to districts.**

A: The Co-op is designed to require minimal administrative bureaucracy or expenses, as it does not play a role in service delivery or the special education identification process. However, any administrative costs of managing the Co-op could be fully financed by the interest on the Co-op's assets, even if held in a simple-interest account.

- **The identified sources of revenue have been discussed in theoretical terms with no specifics. References have been made to current funds including IDEA grant funds, excess cost funds, and local dollars.**

A: The design of the Co-op has been an iterative process. Over the past year, we have spoken to nearly 2,000 stakeholders and have integrated their feedback into the current design model. Although there may have been some early conversations with experts about which funding streams to include, the proposed version of the Co-op is a combination of state and local funds—no IDEA funds are included in the Co-op. IDEA funds would continue to go directly to school districts through the currently established process.

Local governments and the State of Connecticut will both make contributions to fund the Co-op. The State's contribution will come from reallocating the Excess Cost grant and special education portion of the Education Cost Sharing (ECS) grant to the Co-op. The Co-op will not raise the total cost of special education statewide nor will it reduce state aid for special education.

Local governments will make a Community Contribution to the Co-op for each special education student who lives in their town. Under the Co-op, school districts will be reimbursed for 100 percent of their actual special education costs, and every district will receive some state aid for special education and benefit from more predictability in their special education spending.

A Community Contribution will be calculated for each school district and is based on:

- *The number of special education students enrolled in the school district;*
- *The school district's past special education costs; and*
- *An equity adjustment made based on the municipality's ability to pay.*

Community Contributions are calculated on a per pupil basis to normalize district enrollment and spending. To ensure fairness, Community Contributions will reflect each LEA's actual special education costs. It's also important to note that:

- All communities will receive some state support for special education services.
- All communities' contributions will be lower than their actual per pupil special education costs.

- **IDEA funds have specific requirements that need to be met by districts and the state.**

A: The Co-op proposal recognizes these requirements and does not affect the current distribution method for IDEA funding. No federal dollars are included in the Co-op model. All districts will continue to receive their IDEA funds through the currently established process.

- **Cost for students with special needs go beyond direct services. Funds are used to cover professional development for staff, access to contracted consultants for students with unique needs and funds for mediated or due process-ordered services or placements, and legal fees. It is unclear how the cooperative will cover all of these needs.**

A: While the Co-op board of directors (comprised of stakeholders such as district, town, and RESC representatives) will ultimately determine which services are allowable for reimbursement, under the current model, any service—in or out of district—reported by districts as a special education expense on their end of year reporting form (ED001) is included in the Co-op. This includes special education transportation, out-placements, and contracted services. Currently, expenditures for special education staff professional development are not specified under the ED001 and therefore may not be included in the current Co-op model. However, the Co-op board of directors may decide to include these expenditures as eligible for reimbursement. Making expenditures for special education staff professional development reimbursable will not impact the predictability or solvency of the Co-op.

- **There is no discussion of costs for students who qualify for services under Section 504 of the Rehabilitation Act.**

A: The Co-op is designed to cover all special education costs, as reported by schools and districts. This includes both students with 504 plans and Individual Education Plans (IEPs).

- **This is a difficult time in education to make an additional sweeping change to districts' financing. Given the current discussion regarding ECS funding and proposals to break out special education funding from the ECS formula, districts are unclear as to their funding base for next year.**

A: Certainly, there are many different changes being proposed to education funding in the next biennium budget, and we recognize the difficulty this causes for districts and towns. However, the way Connecticut funds special education has been cited as a problem by stakeholders at all levels—including parents, educators, district and town leaders, and policymakers, and we believe that now is an important time to begin working on finding a solution for this issue. Additionally, because the Co-op will need a planning year before being fully implemented, it will not impact the distribution of funds for next school year, and districts and towns will know by January of the year prior to the start of the Co-op what their Community Contributions will be so that they can plan it in their budget. Additionally, the Co-op is designed specifically to make funding more predictable for school districts, thereby eliminating this concern in the years following implementation.

- **There has been no discussion of what happens if the costs at the district-level exceed the funding base provided to the cooperative.**

A: The Co-op is designed to operate with a stop-loss policy and/or reserve fund that will be held in the Co-op structure, and outside of state or local government to ensure all districts' total special education expenditures can be reimbursed by the Co-op, even in the event of an unexpected increase in special education costs.

Based on our model, the reserve fund would work as follows: based on an actuarial analysis, we estimate 2.5 percent of Connecticut's total special education spending (approximately \$50 million in fiscal year 2015) should be a sufficient reserve to ensure the solvency of the Co-op. The 2.5 percent factor was determined by testing various reserve levels to find the appropriate level that balances the need for fiscal solvency of the Co-op without over-reserving for the shortfall risk. Too high a reserve level could lead to overly high Community Contributions to meet both reserve requirements and special education costs, while too low a reserve level could result in a funding shortfall during years of high special education costs. The adequacy of the reserve fund would be evaluated periodically and adjusted to reflect actual experience over time.

The reserve fund would be supported by allocating an annual amount, currently estimated at seven percent of the state's share of special education funding. These funds will be added to the reserve at the beginning of each year, until the reserve fund reaches 2.5 percent of total special education expenditures. Going forward, following a year where special education expenditures exceed the total amount of state and Community Contributions, the seven percent addition to the reserve will replenish the reserve fund to its maximum value, entitled the Required Reserve Balance (RRB). Similar to the initial reserve, the RRB is 2.5

percent of the total special education expenditures from the prior year. The RRB is a floating number rather than a constant to protect the reserve fund in future years from increasing costs and inflation. In years that the reserve fund exceeds 2.5 percent of total special education expenditures, the excess reserve can be returned to districts in the form of a contribution refund. The reserve fund protects the integrity of the model during years of higher-than-predicted statewide spending, thus ensuring the Co-op is financially stable.

Alternatively or in addition, the Co-op could purchase a stop-loss policy to cover years when special education costs exceed expectations. A stop-loss policy could replace a reserve system, or it could be purchased in addition to, or to supplement, the reserve fund. The cost of a stop loss policy could be paid out of the interest on the Co-op's assets, even if held in a simple-interest account.

- **There is no clarity on whether participation is optional or mandated. The assumption is that this model works based on the premise that the entire amount of funding state-wide is contributed to the pool thus mandating participation from all districts.**

A: The Co-op is designed to be the distribution method for state support for special education, and ensures that every district that participates gets some state aid. However, it is not necessary that all districts participate in order for the Co-op to remain solvent. If a district can demonstrate that it is able to fully fund a free and appropriate education for all students without state support, it could potentially choose not to participate.